

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS ANTHONY REID,

Defendant-Appellant.

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UNPUBLISHED

September 11, 2003

No. 239716

Wayne Circuit Court

LC No. 01-005951

Before: Bandstra, P.J., and White and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of armed robbery, MCL 750.529. He was sentenced to eight to twenty years' imprisonment. We affirm.

Defendant argues that he was denied the effective assistance of counsel by his trial counsel's failure to move to suppress his statement on the ground that it was taken in violation of his Sixth Amendment right to counsel. In order to establish ineffective assistance of counsel, a defendant must show both deficient performance and prejudice, i.e., that his counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). "A defendant must overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *Toma, supra* at 302.

Defendant's trial counsel filed a pre-trial motion to suppress defendant's statement on the ground that the statement was involuntary. The trial court denied the motion. Subsequently, defendant's new counsel sought a new trial, arguing that (1) defendant's right to counsel was violated when he was questioned by a police officer regarding the instant offense after he requested counsel at his arraignment, and (2) there was no reasonable basis for defendant's original trial counsel to seek the suppression of defendant's statement on the ground that it was involuntary. Defendant moved for a new trial based on trial counsel's deficient performance, but the trial court did not conduct a *Ginther*<sup>1</sup> hearing. However, relying on the arguments and briefs,

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<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

the court concluded that although defendant's statement was taken in violation of his Sixth Amendment right to counsel, defendant was not prejudiced by counsel's failure to object on that ground because "the other compelling circumstantial evidence was sufficient to establish the defendant's guilt."

Assuming that trial counsel's performance was deficient and not sound trial strategy, we conclude that the trial court did not err in determining that defendant had not demonstrated that, but for trial counsel's errors, there was a reasonable probability that the result of the proceedings would have been different. *Strickland, supra*, 466 US 687-688. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. Here, the evidence against defendant was substantial. Defendant was seen with the other robber minutes after the robbery occurred. Both men fit the descriptions given by witnesses to the robbery and were covered in sweat. Defendant and the other robber ran when they were approached by police officers. The \$79 stolen in the robbery was found next to the same house where defendant was found and arrested. Defendant smelled strongly of campfire smoke, as did the mask that was used in the robbery and found in a nearby alley. In sum, defendant has not established the requisite prejudice because he has not shown that there is a reasonable probability that but for counsel's error in failing to move to suppress defendant's statement on the basis that his Sixth Amendment rights were violated, the result of the proceedings would have been different. *Strickland, supra*, 466 US 687-688. Accordingly, the trial court did not abuse its discretion in denying defendant's motion for a new trial. *People v Miller (After Remand)*, 211 Mich App 30, 47; 535 NW2d 518 (1995).

In a Standard 11 brief, defendant raises additional claims of ineffective assistance of counsel. He asserts that counsel failed to conduct an adequate pretrial investigation, and that counsel had a conflict of interest because he believed defendant was guilty and did not himself believe he could be effective at trial. We reject these arguments. Defendant has not shown that had counsel conducted the investigation defendant argues he should have conducted, counsel would have discovered evidence to assist in defendant's defense. Further, defendant has not shown that counsel's skepticism regarding defendant's claims of innocence affected his representation at trial. Lastly, defendant has failed to show prejudice arising from his final claim of error regarding Officer Para.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Helene N. White  
/s/ Pat M. Donofrio